

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E. S. ORIGINALS INC.,

Plaintiff,

ECF CASE

Civil Action No. 08 CV 1945 (PKL)

- v -

TOTES ISOTONER CORPORATION,

Defendant.

**NOTICE OF DEFENDANT
TOTES ISOTONER
CORPORATION'S MOTION TO
DISMISS THE COMPLAINT OR,
IN THE ALTERNATIVE, TO
STAY THE ACTION PENDING
ARBITRATION**

PLEASE TAKE NOTICE that upon the Complaint in the above-captioned action, the accompanying Memorandum of Law dated April 18, 2008, the accompanying Affirmation of Daniel H. Tabak, Esq. and attached exhibits, dated April 18, 2008, and all prior papers and proceedings in this action, Defendant totes Isotoner Corporation, by its undersigned attorneys, Cohen & Gresser LLP, will move this Court on a date convenient to this Court, before the Honorable Peter K. Leisure, at the United States Courthouse, 500 Pearl Street, New York, New York, Courtroom 18B, for an order (1) dismissing the Complaint for lack of federal subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1) and for failure to state a claim upon which relief may be granted pursuant to

Fed. R. Civ. P. 12(b)(6); or, in the alternative, staying the action pending arbitration; and
(2) granting such other and further relief as this Court deems just and proper.

Dated: April 18, 2008
New York, New York

Respectfully submitted,

COHEN & GRESSER LLP

By: _____ /s/

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